

By the Committee on Business Regulation & Consumer Affairs and Representatives Goodlette, Brown, Fasano, Merchant, Jones, Fiorentino, Warner, Cosgrove, Bilirakis, Sublette, Gay, Posey, Waters, Ogles, Hafner, Kelly, Farkas, Byrd, Edwards, Harrington, Russell, Kosmas, Argenziano and Greenstein

1 A bill to be entitled
2 An act relating to homeowners' associations,
3 condominium associations, mobile homeowners'
4 associations, cooperative associations, and
5 cooperative not-for-profit associations;
6 amending ss. 607.0802 and 617.0802, F.S.;
7 providing that certain persons may be deemed
8 members of the association and eligible to
9 serve as a director of a condominium
10 association, cooperative association,
11 homeowners' association, or mobile homeowners'
12 association under certain circumstances;
13 amending s. 617.0601, F.S.; providing that
14 certain provisions in bylaws, rules, or other
15 regulations are void; amending s. 617.301,
16 F.S.; redefining the term "homeowners'
17 association" for the purposes of the Florida
18 Not For Profit Corporation Act to include a
19 mobile home subdivision; providing that
20 provisions currently governed by the act
21 relating to the purpose and scope of
22 homeowners' associations, powers and duties,
23 right of owners to peaceably assemble,
24 meetings, transition of homeowners'
25 associations' control in a community,
26 assessments and charges, agreements,
27 recreational leaseholds, dispute resolutions,
28 and covenants would apply to mobile home
29 subdivisions; amending s. 719.103, F.S.;
30 defining the terms "special assessment,"
31 "voting certificate," and "voting interests"

1 for the purposes of the Cooperative Act;
2 amending s. 719.1035, F.S.; providing that all
3 provisions of the cooperative documents are
4 enforceable equitable servitudes, run with the
5 land, and are effective until the cooperative
6 is terminated; amending s. 719.104, F.S.;
7 revising language with respect to commingling;
8 providing for easements; amending s. 719.1055,
9 F.S.; revising the amount of votes necessary to
10 amend the cooperative documents; providing
11 additional requirements with respect to
12 amendments; amending s. 719.106, F.S.;
13 providing requirements with respect to
14 insurance and fidelity bonds; creating s.
15 719.115, F.S.; providing limitations on
16 liability of unit owners; creating s. 723.0751,
17 F.S.; providing for membership in mobile
18 homeowners' association in certain
19 circumstances; amending ss. 849.085 and
20 849.0931, F.S.; including cooperatives,
21 residential subdivisions, cooperative
22 associations, and homeowners' associations as
23 defined in s. 617.301, F.S., within the
24 provisions of law relating to penny-ante games
25 and including cooperative associations and
26 homeowners' associations as defined in s.
27 617.301, F.S., within the provisions of law
28 relating to bingo; providing an effective date.
29
30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 607.0802, Florida Statutes, is
2 amended to read:

3 607.0802 Qualifications of directors.--

4 (1) Directors must be natural persons who are 18 years
5 of age or older but need not be residents of this state or
6 shareholders of the corporation unless the articles of
7 incorporation or bylaws so require. The articles of
8 incorporation or bylaws may prescribe additional
9 qualifications for directors.

10 (2) In the event that the eligibility to serve as a
11 member of the board of directors of a condominium association,
12 cooperative association, homeowners' association, or mobile
13 homeowners' association is restricted to membership in such
14 association and membership is appurtenant to ownership of a
15 unit, parcel, or mobile home, a grantor of a trust described
16 in s. 733.707(3), or a beneficiary as defined in s.
17 737.303(4)(b) of a trust which owns a unit, parcel, or mobile
18 home shall be deemed a member of the association and eligible
19 to serve as a director of the condominium association,
20 cooperative association, homeowners' association, or mobile
21 homeowners' association, provided that said beneficiary
22 occupies the unit, parcel, or mobile home.

23 Section 2. Subsection (7) is added to section
24 617.0601, Florida Statutes, to read:

25 617.0601 Members, generally.--

26 (7) Where the articles of incorporation expressly
27 limit membership in the corporation to property owners within
28 specific measurable geographic boundaries and where the
29 corporation has been formed for the benefit of all of those
30 property owners, no such property owner shall be denied
31 membership, provided that such property owner once admitted to

1 membership, shall comply with the terms and conditions of
2 membership. Any bylaws, rules, or other regulations to the
3 contrary are deemed void and any persons excluded from
4 membership by such bylaws, rules, or other regulations are
5 deemed members with full rights, including the right, by the
6 majority, or as otherwise provided in the articles of
7 incorporation, to call for a meeting of the membership.

8 Section 3. Section 617.0802, Florida Statutes, is
9 amended to read:

10 617.0802 Qualifications of directors.--

11 (1) Directors must be natural persons who are 18 years
12 of age or older but need not be residents of this state or
13 members of the corporation unless the articles of
14 incorporation or bylaws so require. The articles of
15 incorporation or the bylaws may prescribe additional
16 qualifications for directors.

17 (2) In the event that the eligibility to serve as a
18 member of the board of directors of a condominium association,
19 cooperative association, homeowners' association, or mobile
20 homeowners' association is restricted to membership in such
21 association and membership is appurtenant to ownership of a
22 unit, parcel, or mobile home, a grantor of a trust described
23 in s. 733.707(3), or a beneficiary as defined in s.
24 737.303(4)(b) of a trust which owns a unit, parcel, or mobile
25 home shall be deemed a member of the association and eligible
26 to serve as a director of the condominium association,
27 cooperative association, homeowners' association, or mobile
28 homeowners' association, provided that said beneficiary
29 occupies the unit, parcel, or mobile home.

30 Section 4. Subsection (7) of section 617.301, Florida
31 Statutes, is amended to read:

1 617.301 Homeowners' associations; definitions.--As
2 used in ss. 617.301-617.312, the term:

3 (7) "Homeowners' association" or "association" means a
4 Florida corporation responsible for the operation of a
5 community or a mobile home subdivision in which the voting
6 membership is made up of parcel owners or their agents, or a
7 combination thereof, and in which membership is a mandatory
8 condition of parcel ownership, and which is authorized to
9 impose assessments that, if unpaid, may become a lien on the
10 parcel. The term "homeowners' association" does not include a
11 community development district or other similar special taxing
12 district created pursuant to statute.

13 Section 5. Subsections (22) and (23) of section
14 719.103, Florida Statutes, 1998 Supplement, are renumbered as
15 subsections (23) and (24), respectively, and new subsections
16 (22), (25), and (26) are added to said section to read:

17 719.103 Definitions.--As used in this chapter:

18 (22) "Special assessment" means any assessment levied
19 against unit owners other than the assessment required by a
20 budget adopted annually.

21 (25) "Voting certificate" means a document which
22 designates one of the record title owners, or the corporate,
23 partnership, or entity representative who is authorized to
24 vote on behalf of a cooperative unit that is owned by more
25 than one owner or by any entity.

26 (26) "Voting interests" means the voting rights
27 distributed to the association members as provided for in the
28 Articles of Incorporation.

29 Section 6. Section 719.1035, Florida Statutes, 1998
30 Supplement, is amended to read:

31 719.1035 Creation of cooperatives.--

1 (1) The date when cooperative existence shall commence
2 is upon commencement of corporate existence of the cooperative
3 association as provided in s. 607.0203. The cooperative
4 documents must be recorded in the county in which the
5 cooperative is located before property may be conveyed or
6 transferred to the cooperative. All persons who have any
7 record interest in any mortgage encumbering the interest in
8 the land being submitted to cooperative ownership must either
9 join in the execution of the cooperative documents or execute,
10 with the requirements for deed, and record, a consent to the
11 cooperative documents or an agreement subordinating their
12 mortgage interest to the cooperative documents. Upon creation
13 of a cooperative, the developer or association shall file the
14 recording information with the division within 30 working days
15 on a form prescribed by the division.

16 (2) All provisions of the cooperative documents are
17 enforceable equitable servitudes, run with the land, and are
18 effective until the cooperative is terminated.

19 Section 7. Subsection (7) of section 719.104, Florida
20 Statutes, 1998 Supplement, is amended, present subsection (9)
21 is renumbered as subsection (10), and a new subsection (9) is
22 added to said section to read:

23 719.104 Cooperatives; access to units; records;
24 financial reports; assessments; purchase of leases.--

25 (7) COMMINGLING.--All funds shall be maintained
26 separately in the association's name. Reserve and operating
27 funds of the association shall not be commingled unless
28 combined for investment purposes. This subsection is not meant
29 to prohibit prudent investment of association funds even if
30 combined with operating or other reserve funds of the same
31 association, but such funds must be accounted for separately,

1 and the combined account balance may not, at any time, be less
2 than the amount identified as reserve funds in the combined
3 account.No manager or business entity required to be licensed
4 or registered under s. 468.432, or an agent, employee,
5 officer, or director of a cooperative association may
6 commingle any association funds with his or her own funds or
7 with the funds of any other cooperative association or
8 community association as defined in s. 468.431.

9 (9) EASEMENTS.--Unless prohibited by the cooperative
10 documents, the board of administration has the authority,
11 without the joinder of any unit owner, to grant, modify, or
12 move any easement, if the easement constitutes part of or
13 crosses the common areas or association property. This
14 subsection does not authorize the board of administration to
15 modify, move, or vacate any easement created in whole or in
16 part for the use or benefit of anyone other than the unit
17 owners, or crossing the property of anyone other than the unit
18 owners, without the consent or approval of those other persons
19 having the use or benefit of the easement, as required by law
20 or by the instrument creating the easement.

21 Section 8. Subsections (2) and (3) of section
22 719.1055, Florida Statutes, are amended and subsection (4) is
23 added to said section to read:

24 719.1055 Amendment of cooperative documents;
25 alteration and acquisition of property.--

26 (2) Unless a lower number is provided in the
27 cooperative documents or unless such action is expressly
28 prohibited by the articles of incorporation or bylaws of the
29 cooperative, the acquisition of real property by the
30 association, and material alterations or substantial additions
31 to such property by the association shall not be deemed to

1 constitute a material alteration or modification of the
2 appurtenances to the unit if such action is approved by
3 two-thirds ~~75 percent~~ of the total voting interests of the
4 cooperative.

5 (3)(a) Unless other procedures are provided in the
6 cooperative documents or such action is expressly prohibited
7 by the articles of incorporation or bylaws of the cooperative,
8 the association may materially alter, convert, lease, or
9 modify the common areas of the mobile home cooperative if the
10 action is approved by two-thirds ~~75 percent~~ of the total
11 voting interests of the cooperative.

12 (b) The association may change the configuration or
13 size of a unit only if the action is approved by the affected
14 unit owners and by two-thirds ~~75 percent~~ of the total voting
15 interests of the cooperative.

16 (4)(a) If the cooperative documents fail to provide a
17 method of amendment, the documents may be amended as to all
18 matters except those described in subsection (1) if the
19 amendment is approved by the owners of not less than
20 two-thirds of the units.

21 (b) No provision of the cooperative documents shall be
22 revised or amended by reference to its title or number only.
23 Proposals to amend existing provisions of the cooperative
24 documents shall contain the full text of the provision to be
25 amended, new words shall be inserted in the text and
26 underlined, and words to be deleted shall be lined through
27 with hyphens. However, if the proposed change is so extensive
28 that this procedure would hinder, rather than assist, the
29 understanding of the proposed amendment, it is not necessary
30 to use underlining and hyphens as indicators of words added or
31 deleted, but instead, a notation must be inserted immediately

1 preceding the proposed amendment in substantially the
2 following language: "Substantial rewording of document. See
3 provision for present text."

4 (c) Nonmaterial errors or omissions in the amendment
5 process will not invalidate an otherwise properly promulgated
6 amendment.

7 Section 9. Paragraph (k) of subsection (1) of section
8 719.106, Florida Statutes, 1998 Supplement, is amended to
9 read:

10 719.106 Bylaws; cooperative ownership.--

11 (1) MANDATORY PROVISIONS.--The bylaws or other
12 cooperative documents shall provide for the following, and if
13 they do not, they shall be deemed to include the following:

14 (k) Insurance or fidelity bonds.--The association
15 shall obtain and maintain adequate insurance or ~~provision for~~
16 ~~the~~ fidelity bonding of all persons who control or disburse
17 funds of the association. The insurance policy or fidelity
18 bond must cover the maximum funds that will be in the custody
19 of the association or its management agent at any one time.As
20 used in this paragraph ~~section~~, the term "persons who control
21 or disburse funds of the association" includes, but is not
22 limited to,~~means~~ those individuals authorized to sign checks,
23 and the president, secretary, and treasurer of the
24 association. ~~If an association's annual gross receipts do not~~
25 ~~exceed \$100,000, the bond shall be in the principal sum of not~~
26 ~~less than \$10,000 for each such person. If an association's~~
27 ~~annual gross receipts exceed \$100,000 but do not exceed~~
28 ~~\$300,000, the bond shall be in the principal sum of \$30,000~~
29 ~~for each such person. If an association's annual gross~~
30 ~~receipts are greater than \$300,000, the bond shall be in the~~

1 ~~principal sum of not less than \$50,000 for each such person.~~
2 The association shall bear the cost of bonding and insurance.

3 Section 10. Section 719.115, Florida Statutes, is
4 created to read:

5 719.115 Limitation of liability.--

6 (1) The liability of the owner of a unit for common
7 expenses is limited to the amounts for which he or she is
8 assessed for common expenses from time to time in accordance
9 with this chapter, the cooperative documents, and the bylaws.

10 (2) The owner of a unit may be personally liable for
11 acts or omissions of the association in relation to the use of
12 the common areas, but only to the extent of his or her pro
13 rata share of the liability in the same percentage of his or
14 her designated portion of the common expenses and then in no
15 case shall the liability exceed the value of his or her unit.

16 (3) In any legal action in which the association may
17 be exposed to liability in excess of insurance coverage
18 protecting it and the unit owners, the association shall give
19 notice of the exposure within a reasonable time to all unit
20 owners and they shall have the right to intervene and defend.

21 Section 11. Section 723.0751, Florida Statutes, is
22 created to read:

23 723.0751 Mobile home subdivision homeowners'
24 association.--

25 (1) In the event that no homeowners' association has
26 been created pursuant to ss. 617.301-617.312 to operate a
27 mobile home subdivision, the owners of lots in such mobile
28 home subdivision shall be authorized to create a mobile home
29 subdivision homeowners' association in the manner prescribed
30 in ss. 723.075, 723.076, and 723.078 which shall have the

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1 powers and duties, to the extent applicable, set forth in ss.
2 723.002(2) and 723.074.

3 (2) Rights granted to the owners of lots in a mobile
4 home subdivision in ss. 723.002(2) and 723.074 may be
5 exercised through an association created or authorized
6 pursuant to this section for the owners of lots who are
7 members of the mobile home subdivision homeowners'
8 association.

9 (3) In the event that the owners of lots in a mobile
10 home subdivision share common areas, recreational facilities,
11 roads, and other amenities with the owners of mobile homes in
12 a mobile home park and the mobile home owners have created a
13 mobile homeowners' association pursuant to ss.
14 723.075-723.079, said mobile homeowners' association shall be
15 the authorized representative of owners of lots in said mobile
16 home subdivision provided:

17 (a) The members of the mobile homeowners' association
18 have, by majority vote, authorized the inclusion of
19 subdivision lot owners in the mobile home park homeowners'
20 association; and

21 (b) The owners of lots in the mobile home subdivision
22 are entitled to vote only on matters that effect their rights
23 contained in ss. 723.002(2) and 723.074.

24 Section 12. Paragraph (b) of subsection (2) and
25 subsection (5) of section 849.085, Florida Statutes, are
26 amended to read:

27 849.085 Certain penny-ante games not crimes;
28 restrictions.--

29 (2) As used in this section:

30 (b) "Dwelling" means residential premises owned or
31 rented by a participant in a penny-ante game and occupied by

1 such participant or the common elements or common recreational
2 areas of a condominium, cooperative, residential subdivision,
3 or mobile home park of which a participant in a penny-ante
4 game is a unit owner, or the facilities of an organization
5 which is tax exempt under s. 501(c)(7) of the Internal Revenue
6 Code. The term "dwelling" also includes a college dormitory
7 room or the common recreational area of a college dormitory or
8 a publicly owned community center owned by a municipality or
9 county.

10 (5) The conduct of any penny-ante game within the
11 common elements or common recreation area of a condominium,
12 cooperative, residential subdivision, or mobile home park or
13 the conduct of any penny-ante game within the dwelling of an
14 eligible organization as defined in subsection (2) or within a
15 publicly owned community center owned by a municipality or
16 county creates no civil liability for damages arising from the
17 penny-ante game on the part of a condominium association,
18 cooperative association, a homeowners' association as defined
19 in s. 617.301, mobile home owner's association, dwelling
20 owner, or municipality or county or on the part of a unit
21 owner who was not a participant in the game.

22 Section 13. Subsection (4) and paragraph (e) of
23 subsection (11) of section 849.0931, Florida Statutes, are
24 amended to read:

25 849.0931 Bingo authorized; conditions for conduct;
26 permitted uses of proceeds; limitations.--

27 (4) The right of a condominium association, a
28 cooperative association, a homeowners' association as defined
29 in s. 617.301, a mobile home owners' association, a group of
30 residents of a mobile home park as defined in chapter 723, or
31 a group of residents of a mobile home park or recreational

1 vehicle park as defined in chapter 513 to conduct bingo is
2 conditioned upon the return of the net proceeds from such
3 games to players in the form of prizes after having deducted
4 the actual business expenses for such games for articles
5 designed for and essential to the operation, conduct, and
6 playing of bingo. Any net proceeds remaining after paying
7 prizes may be donated by the association to a charitable,
8 nonprofit, or veterans' organization which is exempt from
9 federal income tax under the provisions of s. 501(c) of the
10 Internal Revenue Code to be used in such recipient
11 organization's charitable, civic, community, benevolent,
12 religious, or scholastic works or similar activities or, in
13 the alternative, such remaining proceeds shall be used as
14 specified in subsection (3).

15 (11) Bingo games may be held only on the following
16 premises:

17 (e) With respect to bingo games conducted by a
18 condominium association, a cooperative association, a
19 homeowners' association as defined in s. 617.301, a mobile
20 home owners' association, a group of residents of a mobile
21 home park as defined in chapter 723, or a group of residents
22 of a mobile home park or recreational vehicle park as defined
23 in chapter 513, property owned by the association, property
24 owned by the residents of the mobile home park or recreational
25 vehicle park, or property which is a common area located
26 within the condominium, mobile home park, or recreational
27 vehicle park.

28 Section 14. This act shall take effect upon becoming a
29 law.

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